Ganesan a/l Singaram v Setiausaha Suruhanjaya Pasukan Polis & Ors

HIGH COURT (MELAKA) — CIVIL SUIT NO 21-4 OF 1995
AUGUSTINE PAUL JC
8 AUGUST 1997

Civil Procedure *— Discovery — Application for production of document — Notes of evidence of disciplinary inquiry of police constable — Whether documents could be disclosed — Whether disclosure prohibited by s 3 of Service Commissions Act 1957 — Whether notes of evidence recorded by disciplinary tribunal at inquiry constitute 'communication' within the meaning of s 3 — Whether the word 'communication' in s 3 should be given a restricted meaning — Whether disciplinary tribunal can be considered to be the agent of Police Force Commission — Service Commissions Act 1957 s 3 — Federal Constitution arts 135(2), 140(6)(b), 144 (5A)(b) & 144(6)*

The plaintiff was a police constable in the Police Force. In July and August 1993, he attended a disciplinary proceeding instituted by the fourth defendant. At the conclusion of the inquiry, the plaintiff was found guilty and was dismissed from the Police Force. The plaintiff commenced an action for wrongful dismissal. By his summons in chambers, the plaintiff prayed for an order that he be allowed discovery and inspection of the notes of evidence of the disciplinary inquiry. The affidavit in reply of the defendants stated that notes of evidence of the disciplinary inquiry could not be disclosed by virtue of s 3 of the Service Commissions Act 1957 ('the Act'). The central issue for determination in this application was whether the documents, being the notes of evidence recorded by the disciplinary tribunal at the inquiry, constitute 'communication' within the meaning of s 3 as the prohibition contained in the section relates to the production or disclosure of any 'communication' between a commission and the other named persons.

Held, allowing the application:

(1) Section 3 of the Act has in contemplation an interchange between two or more persons as the section refers to a communication between a commission and any of the named persons. It is manifestly clear that whatever transpires at a disciplinary tribunal is in fact in the nature of a hearing. Therefore, it could not be said that during the hearing the plaintiff and the tribunal were in communication with each other as there was no question of an interchange of thoughts or opinions between them. The tribunal merely heard and recorded what was being presented to it. The result was that whatever transpired at the disciplinary tribunal was not a communication between the tribunal and the plaintiff in accordance with the ordinary meaning of the word in s 3. The section therefore did not apply and, instead, applies to other confidential communications between the commission and the persons named in the section (see pp 252C and 254D–G).

(2) A wider construction of the word 'communication' in s 3 to include what transpired at the disciplinary tribunal will have the effect of preventing a person from adequately presenting his case in court as the notes of evidence of the tribunal will not be available to him when he does not get the required consent. Such a denial of the record would also conflict with art 135(2) of the Federal Constitution as his constitutional right to be heard would be impaired. A right to be heard does not cease at the disciplinary tribunal stage. The right to be heard continues right up to the point of time when a person has exhausted all legal avenues open to him to challenge the decision against him. It would therefore include this proceeding instituted by the plaintiff. An extended meaning given to the word 'communication' would therefore place unnecessary hurdles in a person's right to vindicate himself and to be heard (see p 255A–D).

(3) Even if it could be argued that the word 'communication' includes what transpired between the parties at the disciplinary tribunal, the meaning of the word must be restricted in its application so as not to include such matters in order to avoid extraordinary results which cannot have been intended by Parliament. Any doubt that may arise in the view is resolved by the marginal notes to the section which states, 'certain communications to be privileged'. This makes it clear that the section does not extend to all but only certain types of communications. A marginal note to a section, being a part of the statute, may be considered in construing the section or any other provision of the statute, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section (see p 255E–H).

(4) Section 3 is restricted in its operation to communications between a commission and the other named persons. In this case, however, the communications were made not to the commission but to the disciplinary tribunal to which the latter had delegated its disciplinary functions. A communication to the disciplinary tribunal shall be deemed to be a communication to the commission only if the former can be said to be the agent of the latter.

The constitutional provisions that authorize the Police Force Commission to delegate its powers (arts 140(6)(b) and 144(6) of the Federal Constitution) and at the same time to hear appeals from the delegate (art 144(5A)(b)) must be harmoniously interpreted so as to give effect to both of them bearing in mind the rules of interpretation applicable to a written constitution. This can only be achieved by not treating the disciplinary tribunal as the agent of the Police Force Commission. Both the organs are therefore compelled to function independently. If this were not so, art 144(5A)(b) would be rendered nugatory. Such a harmonious interpretation would result in any act of the disciplinary tribunal being its own and not that of the Police

Force Commission. Anything said to the disciplinary tribunal cannot therefore be deemed to have been said to the Police Force Commission as the characteristics of an agency in the relationship between the delegator and the delegate will not exist. In the premises, s 3 becomes inapplicable to the case at bar as the section is restricted in its operation to communications between a commission and the other named persons (see pp 255I, 256A–B and 258F–I).

[Bahasa Malaysia summary

Plaintif merupakan seorang pegawai polis dalam Pasukan Polis. Pada bulan Julai dan Ogos 1993, dia telah menghadiri prosiding tatatertib yang dimulakan oleh defendan keempat. Di penutupan siasatan, plaintif didapati bersalah dan dipecat dari Pasukan Polis. Plaintif memulakan suatu tindakan untuk pemecatan salah. Melalui saman dalam kamar, plaintif memohon suatu perintah yang membenarkan penzahiran dan pemeriksaan nota-nota keterangan mengenai siasatan tatatertib. Afidavit jawapan defendan-defendan menyatakan bahawa nota-nota keterangan mengenai siasatan tatatertib tidak boleh didedahkan disebabkan s 3 Akta Suruhanjaya Perkhidmatan 1957 ('Akta tersebut'). Isu utama untuk penentuan dalam permohonan ini adalah sama ada dokumen-dokumen tersebut, yang merupakan nota-nota keterangan yang direkodkan oleh tribunal tatatertib di siasatan, membentuk 'komunikasi' dalam lingkungan maksud s 3 memandangkan larangan yang terkandung dalam seksyen itu berkaitan dengan pengemukaan atau pendedahan mana-mana 'komunikasi' di antara sebuah suruhanjaya dan orang lain yang dinamakan.

Diputuskan, membenarkan permohonan:

(1) Seksyen 3 Akta tersebut merangkumi pertukaran di antara dua atau lebih orang kerana seksyen itu merujuk kepada komunikasi di antara suruhanjaya dan sesiapa daripada orang yang dinamakan. Adalah sungguh jelas bahawa apa sahaja yang berlaku di tribunal tatatertib pada hakikatnya adalah bagaikan apa yang berlaku di pembicaraan. Oleh itu, ia tidak boleh dikatakan bahawa semasa pembicaraan plaintif dan tribunal saling berhubung antara satu sama lain kerana tiada soalan tentang pertukaran fikiran atau pendapat di antara mereka. Tribunal cuma mendengar dan merekodkan apa yang dikemukakan kepadanya. Keputusannya adalah bahawa apa yang berlaku di tribunal tatatertib bukanlah komunikasi di antara tribunal dan plaintif menurut makna biasa perkataan itu dalam s 3. Maka seksyen itu tidak terpakai dan sebaliknya terpakai kepada komunikasi sulit yang lain di antara suruhanjaya dan orang yang dinamakan dalam seksyen (lihat ms 252C dan 254D–G).

(2) Tafsiran yang lebih luas atas perkataan 'komunikasi' dalam s 3 untuk termasuk apa yang berlaku di tribunal tatatertib akan mempunyai kesan menghalang seseorang daripada mengemukakan kesnya dengan secukupnya di mahkamah kerana

nota-nota keterangan tribunal tidak boleh diperolehinya apabila dia tidak mendapat kebenaran yang dikehendaki. Penafian demikian tentang rekod juga akan bertentangan dengan perkara 135(2) Perlembagaan Persekutuan kerana hak perlembagaannya untuk didengar akan terjejas. Hak untuk didengar tidak berhenti di tahap tribunal tatatertib. Hak untuk didengar berterusan sehingga takat masa apabila seseorang telah habis menggunakan segala jalan undang-undang yang terbuka kepadanya bagi mencabar keputusan terhadapnya. Oleh itu, ia akan termasuk prosiding ini yang dimulakan oleh plaintif. Dengan itu, makna yang dilanjutkan kepada perkataan 'komunikasi' akan meletak sekatan yang tidak perlu ke atas hak seseorang untuk menyangkal tuduhan terhadap dirinya dan untuk didengar (lihat ms 255A–D).

(3) Sekalipun ia boleh dihujahkan bahawa perkataan 'komunikasi' termasuk apa yang berlaku di antara pihak-pihak di tribunal tatatertib, makna perkataan mestilah dihadkan dalam pemakaiannya supaya tidak termasuk perkara-perkara begitu bagi mengelak keputusan luar biasa yang tidak mungkin dihasratkan oleh Parlimen. Sebarang keraguan yang boleh timbul atas pandangan ini diselesaikan oleh nota birai seksyen itu yang menyatakan, 'komunikasi tertentu adalah terlindung'. Ini menjelaskan bahawa seksyen itu tidak dilanjutkan kepada semua tetapi beberapa jenis komunikasi sahaja. Nota birai sesuatu seksyen, yang merupakan sebahagian statut, boleh dipertimbangkan dalam mentafsirkan seksyen atau mana-mana peruntukan lain statut itu, dengan syarat hakikat bahawa fungsinya hanyalah untuk berkhidmat sebagai panduan ringkas kandungan seksyen diambil kira dengan wajarnya (lihat ms 255E–H).

(4) Seksyen 3 adalah terhad dalam operasinya kepada komunikasi di antara sesebuah suruhanjaya dan orang lain yang dinamakan. Namun demikian, dalam kes ini, komunikasi dibuat bukan kepada suruhanjaya tetapi kepada tribunal tatatertib yang mana ia telah menugaskan fungsi tatatertibnya. Komunikasi kepada tribunal tatatertib haruslah dianggap sebagai komunikasi kepada suruhanjaya hanya jika tribunal tatatertib boleh dikatakan adalah ejen suruhanjaya.

Peruntukan perlembagaan yang memberi kuasa kepada Suruhanjaya Pasukan Polis untuk menugaskan kuasanya (perkara-perkara 140(6)(b) dan 144(6) Perlembagaan Persekutuan) dan pada masa yang sama mendengar rayuan daripada wakil (perkara 144(5A)(b)) mestilah ditafsirkan secara harmoni bagi memberi kesan kepada kedua-dua dengan mengingati rukun tafsiran yang terpakai kepada perlembagaan bertulis. Ini hanya boleh dicapai dengan tidak menganggap tribunal tatatertib sebagai ejen Suruhanjaya Pasukan Polis. Dengan itu, kedua-dua anggota harus berfungsi secara bebas. Jika tidak, perkara 144(5A)(b) akan menjadi tidak berguna. Tafsiran yang harmoni akan menyebabkan

apa yang dilakukan oleh tribunal tatatertib menjadi perbuatan sendiri dan bukannya perbuatan Suruhanjaya Pasukan Polis. Dengan itu, apa yang dikatakan kepada tribunal tatatertib tidak boleh dianggap telah dilafazkan kepada Suruhanjaya Pasukan Polis kerana ciri-ciri suatu ejensi dalam perhubungan di antara pihak yang menugaskan dan yang ditugaskan tidak akan wujud. Dalam keadaan-keadaan ini, s 3 menjadi tidak terpakai kepada kes ini disebabkan seksyen itu adalah terhad dalam operasinya kepada komunikasi di antara sebuah suruhanjaya dan orang lain yang dinamakan (lihat ms 255I, 256A–B dan 258F–I).]

Notes

For cases on discovery, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1141–1164.

Cases referred to

Artemiou v Procopiou [1966] 1 QB 878 (refd)
Becke v Smith (1836) 2 M & W 191 (refd)
Blackpool Corp v Locker [1948] 1 KB 349 (refd)
British Concrete Pipe Association, Re [1983] 1 All ER 203 (refd)
Chatterton v Secretary of State for India in Council [1895] 2 QB 189 (refd)
Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (refd)
Ellis v Home Office [1953] 2 QB 135 (refd)
Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35 (refd)
Gain v Gain [1962] 1 All ER 63 (refd)
Hennessy v Wright (1888) 21 QBD 509 (refd)
Home v Bentinck (1820) 2 Brod & Bing 130 (refd)
Huth v Clarke (1890) 25 QBD 391 (refd)
IRC v JH Hodge & Co (Glasgow) Ltd [1961] 1 WLR 1218 (refd)
Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samy Kano [1997] 1 MLJ 94 (refd)
Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187 (refd)
Luke v IRC [1963] AC 557 (refd)
Mahla Singh v State of Punjab AIR 1967 Punj 447 (refd)
Makanjuola v Commissioner of Police of the Metropolis [1992] 3 All ER 617 (refd)
Neilson v Laugharne [1981] 1 All ER 829 (refd)
Nibaran Chandra v Mahendra Nath AIR 1963 SC 1895 (refd)
Phang Chin Hock v PP [1980] 1 MLJ 70 (refd)
Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487 (refd)
Roop Chand v State of Punjab AIR 1963 SC 1503 (refd)
Sithambaran v Attorney General [1972] 2 MLJ 175 (refd)
Tan Keng Tin, Re & Chop Soon Bee, Re [1932] MLJ 134 (refd)
Tan Kim Chuan & Anor v Chandu Nair [1991] 2 MLJ 42 (refd)
Teh Cheng Poh v PP [1979] 1 MLJ 50 (refd)

A *W & M Wood (Haulage) Ltd v Redpath* (1966) 2 QB 520 (refd)
Wandsworth Board of Works v United Telephone Co (1884) 13 QBD 904 (refd)

Legislation referred to

B Federal Constitution arts 135(2), 140(6)(b), 144(5A)(b), (6)
Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 reg 6
Rules of the High Court 1980 O 24 rr 12, 13, O 92 r 4
Service Commissions Act 1957 s 3

C *Rajasekaran a/l Thiyagarajan* (*RT Raja & Co*) for the plaintiff.
Meor Hashimi Abdul Hamid (Peguam Persekutuan, Pejabat Penasihat Undang-Undang) for the respondent.

Augustine Paul JC: The plaintiff was a police constable in the permanent
D and pensionable establishment of the Police Force and was attached to the Traffic Division of the Melaka Tengah Police. In the months of July and August 1993, he attended a disciplinary proceeding instituted by the fourth defendant or his agents to answer the following charge:

> E Bahawa anda sebagai seorang konstable dalam Pasukan Polis Diraja Malaysia pada ketika itu bertugas di Cawangan Trafik Melaka Tengah dalam Kontinjen Melaka, antara bulan Februari hingga April 1992 telah didapati mengadakan hubungan sulit dengan M Mathavi @ Latha a/p O Malaiethan KP 7345020 iaitu isteri kepada En Tan Kim Siong. Perbuatan anda itu telah mengganggu ketenteraman rumahtangga orang serta mencemarkan nama baik pasukan, maka dengan itu anda telah melakukan satu kesalahan di bawah Peraturan 2
> F Jadual (12) Peraturan-Peraturan Polis (Kelakuan dan Tatatertib Pegawai Rendah Polis dan Mata-Mata) 1970 PU (A) 86 bertarikh 26 Februari 1970 dan PU (A) 50 Pindaan bertarikh 8 Februari 1984 dan boleh dihukum di bawah Peraturan-Peraturan yang sama.

At the conclusion of the inquiry, the plaintiff was found guilty and was dismissed from the Police Force. He commenced this action for wrongful
G dismissal and alleged in his statement of claim, inter alia, that:

(i) he was denied the right of legal representation;

(ii) he was not given sufficient time to call witnesses;

(iii) he was denied the right to cross-examine on certain documents
H tendered at the inquiry;

(iv) the documents tendered by him were not considered;

(v) M Mathavi @ Latha a/p O Malaiethan was not called as a witness; and

(vi) he was not given a reasonable opportunity of being heard in
I contravention of art 135(2) of the Federal Constitution.

Pursuant to the summons for directions filed by the plaintiff on 22 November 1995, it was ordered by the court on 6 February 1996 that the defendants do serve a list of documents in their possession within

30 days. The defendants, in their list of documents dated 3 April 1996, said that: A

> Semua arahan, kenyataan, dokumen, rekod, memoranda dan surat-menyurat yang berkaitan dan dibuat berhubungan dengan persediaan dan persiapan tindakan ini

cannot be released and inspected as they are confidential and protected. B On 3 April 1997, the solicitors for the plaintiff wrote to the fourth defendant asking for a copy of the notes of evidence taken at the disciplinary inquiry. By letter dated 5 April 1997, the fourth defendant refused to comply saying that:

> 3 Berhubung dengan nota keterangan, pihak kami tidak dapat membekalkan dokumen tersebut kerana ianya bukan dokumen yang membenarkan orang awam melihatnya selaras dengan peruntukan Service Commissions Ordinance 1957. C
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> 4 Pihak tuan dinasihatkan berhubung dengan Yang Arif Peguam Persekutuan di Pejabat Penasihat Undang-Undang Negeri, Negeri Melaka. D

Thus, on 8 April 1997, the plaintiff filed and served a notice to produce on the defendants which was in the following terms:

> Notis untuk mengemukakan
>
> Ambil perhatian bahawa kamu adalah dengan ini dikehendaki mengemukakan E dan menunjukkan kepada mahkamah semasa perbicaraan perkara ini kesemua buku-buku, kertas, surat, salinan surat dan lain-lain tulisan dan dokumen dalam jagaan, milikan atau minit yang berhubungan dengan perkara-perkara yang berkenaan dalam ini dan khususnya dokumen-dokumen seperti berikut:
>
> (1) Nota-nota keterangan kamar tatatertib yang telah diadakan ke atas plaintiff pada bulan-bulan Julai sehingga Ogos 1993. F

By his summons in chambers filed on 19 April 1997, the plaintiff prayed for an order, inter alia, that he be allowed discovery and inspection of the notes of evidence of the disciplinary inquiry and be allowed to take copies of the documents, if necessary, in accordance with O 24 rr 12 and 13 and G O 92 r 4 of the Rules of the High Court 1980. In the affidavit accompanying the application affirmed by Mr Rajasekaran a/l R Thiyagarajan, counsel for the plaintiff, it was averred that the issues raised by the plaintiff relate to the procedure adopted at the disciplinary inquiry as pleaded in the statement of claim and, as stated in para 7 of the affidavit:

> Oleh itu, berdasarkan kepada alasan-alasan yang disebut diatas, pihak plaintiff H memohon nota-nota keterangan, minit-minit dan apa-apa dokumen-dokumen yang berkenaan dengan kamar tatatertib yang dijalankan ke atas plaintif dari bulan-bulan Julai sehingga Ogos 1993 memandangkan bahawa kes plaintif adalah berasaskan kepada ketidakpatuhan oleh defendan-defendan akan prosedur-prosedur yang sepatutnya diikuti semasa pendengaran kamar tatatertib dijalankan. I

The affidavit in reply of the defendants was affirmed by one ASP Osman bin Muhammad Sebot and the material parts of it read as follows:

4 Saya mengatakan bahawa proses tindakan tatatertib yang diambil oleh Timbalan Ketua Polis Negeri Melaka yang berpangkat Penolong Pesuruhjaya Polis (ACP) selaku pegawai pengadil terhadap plaintif adalah berdasarkan peruntukan-peruntukan di dalam Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Mata-Mata) 1970 dan juga berdasarkan kuasa-kuasa yang telah diperwakilkan oleh Suruhanjaya Pasukan Polis melalui Suratcara Perwakilan Fungsi-Fungsi, Kuasa-Kuasa, Tugas-Tugas dan Tanggungjawab-Tanggungjawab Tertentu mengikut peruntukan perkara-perkara 140(6)(b) dan 144(6) Perlembagaan Persekutuan dan telah diwartakan di dalam Warta Kerajaan Persekutuan sebagai PU (B) 621 bertarikh 19 Disember 1985.

5 Saya juga mengatakan bahawa nota prosiding acara kamar tatatertib yang dicatit oleh pegawai pengadil adalah dokumen-dokumen yang mempunyai hak keistimewaan dan perlindungan seperti yang diperuntukkan di dalam Akta Suruhanjaya Perkhidmatan 1957 (Akta 393).

6 Oleh yang demikian, permohonan peguamcara plaintif untuk mendapatkan salinan nota-nota prosiding acara kamar tatatertib tidak dapat dipertimbangkan oleh pihak polis berdasarkan peruntukan-peruntukan yang dinyatakan di atas kecuali diarahkan sebaliknya oleh mahkamah yang mulia ini.

Section 3 of the Service Commissions Act 1957 which was relied on by the defendants reads as follows:

> No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication written or oral which has taken place between a Commission or any member of the Commission and the Government or any Minister or public officer or any communication between members of a Commission in exercise of or in connection with the exercise of the functions of the Commission unless the Yang Di-Pertuan Agong shall in writing consent to such production or disclosure.

I shall hereafter refer to the Service Commissions Act 1957 as 'the Act' and s 3 of the Act as 's 3'. Section 3 provides that the person who may consent to the production or disclosure of the communication contemplated by the section is the Yang Di-Pertuan Agong. In reality, this decision would be made by the Cabinet or a particular minister to whom the authority has been delegated (see *Teh Cheng Poh v PP* [1979] 1 MLJ 50). As the affidavit of ASP Osman to which I have referred earlier has been affirmed on behalf of all the defendants, including the Police Force Commission, I shall assume, for the purposes of this judgment, that the refusal has been validly made. In any event, the defendants' refusal to furnish the documents to the plaintiff will be lawful only if, in the first place, they fall within the ambit of s 3.

Thus the central issue for determination in this application is whether the documents, being the notes of evidence recorded by the disciplinary tribunal at the inquiry, constitute 'communication' within the meaning of s 3 as the prohibition contained in the section relates to the production or disclosure of any 'communication' between a commission and the other named persons.

In his submission, learned counsel for the plaintiff contended that the section only attaches privilege to a communication which has taken place between certain parties, that is to say:

(i) between a commission and the government or any minister or public officer; or

(ii) any communication between members of a commission in exercise of or connection with the exercise of the functions of the commission.

He said that as the word 'communication' has not been defined in the Act, its dictionary meaning should be adopted. The *Oxford Dictionary* defines the word as 'the act of communicating, the thing communicated or message'. He also referred to *Black's Law Dictionary* (6th Ed) which defines the word as:

> Information given; the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Intercourse, connection. Act of or system of transmitting information. A 'communication' is ordinarily considered to be a deliberate interchange of thoughts or opinions between two or more persons, as distinguished from 'res gestae' expressions which are spontaneously or instinctively provoked, or made while under such shock or excitement as to preclude the possibility of design. *Gulf Oil Corp v Harris* Oki 425 P 2d 957, 962.
>
> Confidential communications. These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other or who, on account of their relative situation, are under a special duty of secrecy and fidelity which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife, doctor and patient, and attorney and client. Such are privileged at the option of the spouse-witness, patient-witness, client-witness. For purpose of rule that the attorney-client privilege is limited to 'communication' between the attorney and the client, 'communication' is not restricted to oral or written matters but extends to information communicated by the client to the attorney by other means. *State v Hardin Mo App* 558 SW 2d 804, 807 Fed Evid R 501.

Learned counsel added that the object of the Act is to provide some form of protection or immunity to the members of a commission to enable them to perform their duties properly without fear or favour and does not extend to the notes of evidence of the disciplinary tribunal. He concluded by saying that a purposive approach should be adopted in interpreting s 3 so as to exclude the documents he is seeking from the ambit of the word 'communication' in the section. In his submission, the learned Federal Counsel contended that the documents come within the meaning of s 3. In support of his argument, he referred to *Neilson v Laugharne* [1981] 1 All ER 829 and *Makanjuola v Commissioner of Police of the Metropolis* [1992] 3 All ER 617 where the refusal of the requests for inquiry notes made by the police in the course of investigating into complaints against police officers were upheld. The learned Federal Counsel also added that the plaintiff will not be prejudiced by the non-disclosure of the documents as he will have the opportunity to cross-examine the witnesses of the

defendants on the documents when they are called to give evidence at the trial.

Before I proceed any further, I shall first deal with certain aspects of the submission of the learned Federal Counsel in opposing the application of the plaintiff. My response to the authorities relied on by the learned Federal Counsel is that they are not relevant to the interpretation of s 3. It was held in the two cases that witness statements taken by the police in the course of investigating a complaint under s 49 of the Police Act 1964 were protected from production or disclosure in civil proceedings brought by the complainant against the police on the ground of public interest immunity notwithstanding that the makers of the statements might consent to their disclosure, since the immunity could not be displaced by consent to disclosure. It was also held that statements used as evidence in police disciplinary hearings and the transcript of such hearings were protected from production or disclosure in civil proceedings on the ground of public interest immunity. Thus, the two cases relate to matters over which there is immunity from production while the case at bar concerns a determination of whether certain documents fall within the scope of s 3 before the question of immunity from production can arise. I interpolate to add that the learned Federal Counsel's apparently generous and conciliatory submission that the information sought by the plaintiff may be elicited in cross-examination of the defence witnesses is without merit. The unambiguous language employed in s 3 is clear enough to prohibit a person from not only producing but also disclosing any communication in any legal proceeding. This would preclude the defendants from being cross-examined on any communication falling within the section without the required consent. It is also settled law that evidence may not be given of documents for which privilege is established (see *Home v Bentinck* (1820) 2 Brod & Bing 130; *Hennessy v Wright* (1888) 21 QBD 509; *Chatterton v Secretary of State for India in Council* [1895] 2 QB 189; *Ellis v Home Office* [1953] 2 QB 135) nor may a witness refresh his memory from privileged documents (see *Gain v Gain* [1962] 1 All ER 63).

As the hub of the application before me revolves around the construction of s 3, it is pertinent to bear in mind certain rules relating to statutory interpretation. Abdul Hamid Omar LP referred to the various rules of interpretation in *Tan Kim Chuan & Anor v Chandu Nair* [1991] 2 MLJ 42 and said at pp 43–44:

> We hasten to add that we are conscious that there are two schools of thought relating to statutory interpretation. Lord Denning favoured a creative role for judges, taking on themselves the task of ascertaining the purpose of an Act and the ironing out of creases which may appear. Lord Denning has observed in *Seaford Court Estates Ltd v Asher* [1949] 2 KB 481 at p 499 that:
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> > '... it would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set out to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which give rise to it and of the mischief which it was passed

to remedy and then he must supplement the written word so as to give "force and life" to the intention of the legislature.' A

The other school, notably Lord Simonds, did not share Lord Denning's approach and argued against such a creative role preferring to leave all aspects of the legislative function to Parliament, 'if a gap is disclosed, the remedy lies in an amending Act' (*Magor & St Mellons RDC v Newport Corp* [1952] AC 189). B

In the same case, Lord Morton of Henryton remarked that:

'In so far as the intention of Parliament or of ministers is revealed in Acts of Parliament or Orders, either by the language used or by necessary implication, the courts should, of course, carry these intentions out; but it is not the function of any judge to fill in what he conceives to be the gaps in an Act of Parliament. If he does so, he is usurping the function of the Legislature.' C

While we respect both schools, we do not really have to prefer any of these opinions. We also need not dwell much on various rules and aids to construction of statutes except to say in general, that we have always been inclined to follow purposive and literal constructions which means that the literal meaning of an Act will be followed where that meaning is in accordance with the legislative purpose (see the decisions in *United Hokkien Cemetries Penang v Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121; *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449). D

Another case of relevance is *Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samy Kano* [1997] 1 MLJ 94 where Gopal Sri Ram JCA in speaking for the Federal Court said at pp 100–101: E

... The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that: F G

'As a general rule a court will adopt that construction of a statute which will give some effect to all the words which it contains (per Gibbs J in *Beckwith v R* (1976) 12 ALR 333 at p 337).'

See also *Commonwealth v Baume* (1905) 2 CLR 405 at p 414, per Griffith CJ.

Where it is impossible to give a full and accurate meaning to every word appearing in a section of a statute, the duty of the court is to give the words an interpretation 'that produces the greatest harmony and the least inconsistency': *Australian Alliance Assurance Co Ltd v Attorney General (Queensland)* [1916] QSR 135 at p 161, per Cooper CJ. H

Where the legal meaning to be given to a word in a statute is plain, then the word has to be construed accordingly. *Halsbury's Laws of England* (4th Ed) Vol 36 says at para 585: I

If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in their ordinary and natural meaning.

As Sir Rupert Cross said in his book entitled *Statutory Interpretation* (2nd Ed) at p1:

> The essential rule is that words should generally be given the meaning which the normal speaker of the English Language would understand them to bear in the context in which they are used. It would be difficult to over-estimate the importance of this rule because the vast majority of statutes never come before the courts for interpretation.

In *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35, Abdoolcader SCJ said in the Supreme Court that (at p 43):

> ... the starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question, that is its proper and most known signification.

However, if the consequences of giving a word its ordinary meaning is adverse, this presumption may be displaced. As Donaldson MR said in *Re British Concrete Pipe Association* [1983] 1 All ER 203 at p 205:

> Our task, as I see it, is to construe the [Iron and Steel Act 1969], and in so doing the prima facie rule is that words have their ordinary meaning. But that is subject to the qualification that if, giving words their ordinary meaning, we are faced with extraordinary results which cannot have been intended by Parliament, we then have to move on to a second stage in which we re-examine the words.

As Danckwerts LJ said in *Artemiou v Procopiou* [1966] 1 QB 878 at p 888:

> An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available.

Where the interpretation of words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result', we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction (see *Luke v IRC* [1963] AC 557). Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of legislation established by the Act, which will avoid producing or prolonging artificiality in the law, and which will not produce anomalous results (see *IRC v JH Hodge & Co (Glasgow) Ltd* [1961] 1 WLR 1218). In *Wandsworth Board of Works v United Telephone Co* (1884) 13 QBD 904, Bowen LJ said that if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act concerned and not to give any unnecessary powers. This is the basis of the purposive approach to interpretation. This approach, sometimes referred to as the 'golden rule', is described by Parke B in *Becke v Smith* (1836) 2 M & W 191 at p 195 in the following terms:

> It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.

Thus in *W & M Wood (Haulage) Ltd v Redpath* [1966] 2 QB 520, Ashworth J in construing the word 'proceedings' in s 1(3) of the Evidence Act 1939 as referring to both civil and criminal proceedings said at p 526:

> ... it would be odd if a statement made when criminal proceedings are pending or anticipated is admissible in subsequent civil proceedings, whereas a statement made when civil proceedings are pending or anticipated is not.

As I said earlier, the answer to the problem before me lies on the meaning to be given to the word 'communication' in s 3. The rules of statutory interpretation that I have adverted to make it patent that the starting point is to consider the ordinary meaning of the word in question. As stated in *Black's Law Dictionary* a 'communication' is ordinarily considered to be a deliberate interchange of thoughts or opinions between two or more persons. Section 3 itself has in contemplation an interchange between two or more persons as the section refers to a communication between a commission and any of the named persons.The critical issue for determination is whether the relevant persons referred to in the section were involved in a deliberate interchange of thoughts or opinions when the disciplinary inquiry was being conducted. The inquiry was convened for the express purpose of hearing a disciplinary charge against the plaintiff. It was conducted in accordance with the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970. Of particular significance is reg 6 which reads as follows:

> (1) The charge shall be read out to the officer by the adjudicating authority and if necessary explained to him. He shall then be called upon to plead to the charge.
>
> (2) If the officer pleads guilty —
>
> (a) the adjudicating authority shall record briefly the facts in support of the charge and shall explain them to the officer. The facts will be obtained by questioning any officer or witness who has knowledge of the facts, or if the adjudicating authority has been supplied with any documents containing the facts of the charge, by reference to such documents.
>
> (b) the officer shall then be invited to make any statement he wishes in extenuation of the offence. Such statement shall be recorded, or if he has nothing to say, such fact shall be recorded.
>
> (c) the adjudicating authority shall then record a finding of guilt and award a punishment in respect of the offence.
>
> (3) (a) If the officer pleads not guilty or refuses to plead, the adjudicating authority shall examine the witnesses in support of the charge and their evidence shall be recorded.
>
> Provided that when the evidence of such witness has been previously recorded in writing by a police officer acting in the course of duty, it shall be sufficient if the adjudicating authority reads over the record of such evidence to the witness who shall be required to confirm or, if he so desires, to add to or retract from such evidence. Every such written record so read over to a witness shall, if necessary, be interpreted to the officer and endorsed in the manner required by paragraph (9).
>
> (b) The officer or his representative, if any, shall be invited to cross-examine the witnesses and examine any documentary evidence.

A (c) A witness may be re-examined on matters arising out of any cross-examination.

(4) If after hearing the witnesses in support of the charge the adjudicating authority finds that no case has been made out against the officer, the adjudicating authority shall dismiss the case, otherwise the officer shall be called upon to state his defence.

B (5) If called upon for his defence, the officer may give evidence or submit a written statement, and may call witnesses, or he may remain silent. If the officer gives evidence, he may be cross-examined, but not as to character or offences with which he is not charged; and he may make any explanatory statement or be re-examined by his representative, if any, on any point arising out of his cross-examination. His witnesses C may be cross-examined and he or his representative may re-examine them.

(6) The adjudicating authority shall record its finding on the evidence. If the finding is one of guilty, the officer shall be invited to make any statement he wishes in extenuation of the offence. Such statement shall be recorded, or if he has nothing to say, that fact shall be recorded. D

(7) The adjudicating authority may question any witness at any time and any witness may be recalled by leave of the adjudicating authority.

(8) If the officer applies to call as a witness a member of the Force or any person employed to perform police duties under any written law, such witness shall be produced unless it is inexpedient to do so.

E (9) All evidence shall be given in the presence of the officer charged and shall, if in a language not understood by him, be interpreted to him. Evidence shall be recorded in writing and shall be completed by the following endorsement:

> Read over to the witness and stated by him/her to be correct. Interpreted to the officer by ..... in the ..... F language.
>
> Signature
> Adjudicating authority.

(10) The adjudicating authority shall at all times satisfy itself that the officer G understands the nature and effect of the proceedings and has a proper opportunity to defend himself.

In substance, reg 6 refers to a hearing at which evidence is adduced. The word 'hearing' is defined in *Black's Law Dictionary* (6th Ed) as:

H A proceeding of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented. It is a proceeding where evidence is taken to determine issues of fact and to render decision on basis of that evidence. *People v Ivenditti* 276 CA 2d 178, Cal Rptr 761 at p 762. The parties proceeded against or otherwise involved have right to be heard, in much the same manner as a trial and such proceedings may terminate in I final order.

The word 'evidence' is defined in the same dictionary as:

> Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses,

records, documents, exhibits, concrete objects, etc for the purpose of inducing belief in the minds of the court or jury as to their contention. *Taylor v Howard* III R 1 527, 304 A 2d 891, 893. Testimony, writings, or material objects offered in proof of an alleged fact or proposition. The probative material, legally reviewed, by which the tribunal may be lawfully persuaded of the truth or falsity of a fact in issue. *People v Leonard* 207 CA 2d 409, 24 Cal Rptr 597, 600.

Testimony, writing, material objects, or other things presented to the senses that are offered to prove the existence or non-existence of a fact. Calif Evid Code.

All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or non-existence of some matter of fact. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. That which tends to produce conviction in the mind as to existence of a fact. The means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact.

Thus, it is manifestly clear that whatever transpires at a disciplinary tribunal is in fact in the nature of a hearing. The person charged presents evidence to the tribunal whose function is to hear and record the evidence adduced and make a finding at the end of the hearing. In the ordinary use of the English language, one does not speak of an adjudicating tribunal communicating with the person charged before it but of hearing him. Similarly, the person charged does not communicate with the tribunal but presents his evidence before it. It cannot therefore be said that during the hearing, the plaintiff and the tribunal were in communication with each other as there is no question of an interchange of thoughts or opinions between them. The tribunal merely heard and recorded what was being presented to it. The result is that whatever transpired at the disciplinary tribunal is not a communication between the tribunal and the plaintiff in accordance with the ordinary meaning of the word in s 3. The section therefore does not apply and, instead, applies to other confidential communications between the commission and the persons named in the section.

If, contrary to what I have said, the ordinary meaning of the word 'communication' in s 3 is to be so construed as to include what transpired between the parties at the disciplinary tribunal, then the consequences of such a construction must be considered before accepting such a meaning. A person who is dissatisfied with the findings of the tribunal would want to vindicate himself by instituting legal proceedings in the courts. In order to do so effectively, the notes of evidence of the disciplinary tribunal would be a pre-requisite for the proper conduct of his case. In *Nibaran Chandra v Mahendra Nath* AIR 1963 SC 1895, the Supreme Court of India said that an appeal to a higher tribunal would be an empty formality unless the materials on which the order was based were placed before the appellate authority. As MP Jain said in his book entitled *Treatise on Administrative Law* Vol I at p 373:

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> It is thus apparent that a record of the evidence would be as necessary as a reasoned order.

Consequently, a wider construction of the word 'communication' in s 3 to include what transpired at the disciplinary tribunal will have the effect of preventing a person from adequately presenting his case in court as the B notes of evidence of the tribunal will not be available to him when he does not get the required consent. Such a denial of the record would also conflict with art 135(2) of the Federal Constitution as his constitutional right to be heard would be impaired. A right to be heard does not cease at the disciplinary tribunal stage. In *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487, Edgar Joseph Jr J (as he then was) said C that an appeal is a continuation of proceedings by way of rehearing. In my opinion, the right to be heard continues right up to the point of time when a person has exhausted all legal avenues open to him to challenge the decision against him. It would therefore include this proceeding instituted by the plaintiff. An extended meaning given to the word 'communication' D would therefore place unnecessary hurdles in a person's right to vindicate himself and to be heard. Similarly, the commission itself would be unable to defend itself in court by disclosing any communication from the notes of evidence in its favour as the restriction contained in s 3 would also extend to its officers. Of course, the commission may be able to do so by obtaining the required consent when it comes to its turn to present its case E in court. Such a move may, however, be countered by the argument that the commission is making an attempt to approbate and reprobate. Accordingly, even if it can be argued that the word 'communication' includes what transpired between the parties at the disciplinary tribunal, the meaning of the word must be restricted in its application so as not to F include such matters in order to avoid extraordinary results which cannot have been intended by Parliament. Any doubt that may arise in the view that I have expressed is resolved by the marginal notes to the section which read as follows:

> Certain communications to be privileged.

G This makes it clear that the section does not extend to all but only certain types of communications. If the section is to apply to all communications, then the word 'certain' would not have been used in the marginal notes. A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the statute, provided due H account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section (see *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Sithambaran v Attorney General* [1972] 2 MLJ 175; *Re Tan Keng Tin & Re Chop Soon Bee* [1932] MLJ 134).

I What I have expressed thus far will be valid only if what was said by the plaintiff to the disciplinary tribunal can be deemed to have been said to the Police Force Commission. This is for the obvious reason that s 3 is restricted in its operation to communications between a commission and the other named persons and the communications were made not to the

commission but to the disciplinary tribunal to which the latter had delegated its disciplinary functions. A communication to the disciplinary tribunal shall be deemed to be a communication to the commission only if the former can be said to be the agent of the latter. If the disciplinary tribunal cannot be considered to be the agent of the commission, then any communication between it and the public officer will not come within the ambit of s 3.

The disciplinary tribunal came into existence pursuant to the delegation of the functions of the Police Force Commission to it in accordance with arts 140(6)(b) and 144(6) of the Federal Constitution. When a statutory power has been validly delegated, the question arises as to the precise relationship between the delegator and the delegate. In *Huth v Clarke* (1890) 25 QBD 391, Wills J said that the status of the delegate '... means little more than an agent'. Lord Coleridge CJ said in the same case at p 394:

> But delegation does not imply a denudation of power and authority; the 6th Schedule of the Act provides that the delegation may be revoked or altered and the powers resumed by the executive committee. The word 'delegation' implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating, and many examples of this might be given. Unless, therefore, it is controlled by statute, the delegating person can at any time resume its authority.

However, in *Blackpool Corp v Locker* [1948] 1 KB 349 it was held that the relationship between the delegator and delegate was not that of principal and agent as the latter had divested himself of the powers by the act of delegation. With regard to this relationship, De Smith and Woolf in their book entitled *Judicial Review of Administrative Action* (5th Ed) say this at pp 361–362:

> In this context, sharp differences of opinion have been expressed on the relationship between the concepts of delegation and agency. They have sometimes been treated as being virtually indistinguishable but in many cases a distinction has been drawn between them, particularly where the court is acting on the assumption that an authority can validly employ an agent but cannot delegate its powers.
>
> The correct view seems to be that the distinctions drawn between delegation and agency are frequently misconceived in so far as they are based on the erroneous assumption that there is never an implied power to delegate, but that some forms of relationship that are properly included within the concept of delegation are substantially different from those which typify the relationship of principal and agent. There are three main characteristics of agency. First, the agent acts on behalf of his principal and in his name, and the acts done by the agent within the scope of his authority are attributable to the principal. These principles are broadly applicable to delegation in administrative law, and it would generally be held to be unlawful for an authority to invest a delegate with powers exercisable in his own name. But where legislative powers are delegated by Parliament, or validly sub-delegated by Parliament's delegate, the delegate or sub-delegate exercises his powers in his own name. And in the schemes of administrative delegation drawn up in local government law, the relationships between the

A local authorities concerned have often been far removed from those connoted by the relationship of principal and agent. Secondly, the agent can be given detailed directions by his principal and does not usually have a wide area of discretion. On the other hand, one to whom statutory discretionary powers are delegated often has a substantial measure of freedom from control in exercising them. But the degree of freedom from control with which he is B vested may be a decisive factor in determining the validity of the delegation made to him. The more significant are the effective powers of control retained by the delegating authority, the more readily will the courts uphold the validity of the delegation, and they may choose to uphold its validity by denying that there has been any delegation at all, on the ground that in substance the authority in which the discretion has been vested by statute C continues to address its own mind to the exercise of the powers. Thirdly, in agency, the principal retains concurrent powers. This principle was generally applicable to delegation — a rule now expressly restated by statute — and it could (and presumably still can) revoke the authority of a delegate. Nevertheless, it has sometimes been stated that delegation implies a denudation of authority. This cannot be accepted as an accurate general D proposition. On the contrary, the general rule is that an authority which delegates its powers does not divest itself of them — indeed, if it purports to abdicate it may be imposing a legally ineffective fetter on its own discretion — and can resume them. But if it has validly delegated an executive power to make decisions, it will normally be bound by a particular decision, conferring rights on individuals (and possible one derogating from those E rights), made in pursuance of the delegated power and will be incapable of rescinding or varying it; nor will it be competent to 'ratify' with retroactive effect a decision encroaching on individual rights made by the delegate in excess of the powers so delegated, even though the delegating authority could validly have made the decision itself in the first place.

F Thus, the three characteristics of an agency are that:

(a) the agent acts on behalf of his principal and in his name, and the acts done by the agent within the scope of his authority are attributable to the principal;

(b) the agent can be given detailed directions by his principal and does G not usually have a wide area of discretion; and

(c) in agency the principal retains concurrent powers.

I shall now consider whether the three characteristics of an agency as enumerated above exist in the relationship between the Police Force Commission and the disciplinary tribunal. Articles 140(6)(b) and 144(6) H of the Federal Constitution which provide for the delegation of the powers of the commission including its disciplinary powers go on to provide by art 144(6) that the person to whom the power has been delegated '... shall exercise these functions under the direction and the control of the Commission.' However, it must be noted that notwithstanding the control retained by the commission, the body to whom it has delegated its powers I is entitled to act on its own judgment. In this regard, *Administrative Law of Singapore and Malaysia* by MP Jain (2nd Ed) says at p 418:

> It has already been stated earlier that when discretion is conferred on an officer, he must apply his own mind and not act according to anybody's

direction. The same is true of the sub-delegate. He cannot be directed by the delegating authority as to how he should act in a particular case. A

Thus the control that the Police Force Commission may exercise over its delegate is purely administrative in nature as, otherwise, the power delegated may be open to attack. It follows that the disciplinary tribunal cannot be given detailed directions by the Police Force Commission and has a wide B area of discretion. Now I refer to art 144(5A)(b) of the Federal Constitution which provides for a right of appeal from the Disciplinary Board to the Police Force Commission. In the ordinary course of events, if an appeal or revisional power is vested in the delegator by an Act of Parliament, to control its subordinates, the delegator cannot entertain an appeal or revision against the decision of the delegate, because the act of the delegate is that C of the delegator and an authority cannot hear an appeal or revision against an order made by itself (see *Roop Chand v State of Punjab* AIR 1963 SC 1503; *Mahla Singh v State of Punjab* AIR 1967 Punj 447). Accordingly, the separate provisions in the Federal Constitution dealing with the power of delegation and the right to hear appeals from the delegate would be D inconsistent with each other following the ordinary rules of construction. However, the Constitution as the supreme law of Malaysia is distinct from ordinary laws and as such cannot be inconsistent and be at variance with itself (see *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187). It must be remembered that a written constitution like the Federal Constitution is *sui generis*, calling for its own principles of interpretation, E suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation (see *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29). Thus in *Phang Chin Hock v PP* [1980] 1 MLJ 70, the conflict between arts 4(1) and 159 of the Federal Constitution was given a harmonious F construction by the Federal Court so as to give effect to both the provisions. The corollary is that the constitutional provisions that authorize the Police Force Commission to delegate its powers and at the same time to hear appeals from the delegate must be harmoniously interpreted so as to give effect to both of them bearing in mind the rules of interpretation applicable to a written constitution. This can only be achieved by not treating the G disciplinary tribunal as the agent of the Police Force Commission. Both the organs are therefore compelled to function independently. If this were not so, art 144(5A)(b) would be rendered nugatory. Such a harmonious interpretation would result in any act of the disciplinary tribunal being its own and not that of the Police Force Commission. Anything said to the H disciplinary tribunal cannot therefore be deemed to have been said to the Police Force Commission as the characteristics of an agency in the relationship between the delegator and the delegate will not exist. In the premises, s 3 becomes inapplicable to the case at bar as the section is restricted in its operation to communications between a commission and the other named persons. I

It is therefore my primary view that s 3 does not apply to communications made to the disciplinary tribunal. Even if I am wrong in this conclusion, my secondary view is that the word 'communication' in

A s 3 does not include what transpired at the disciplinary tribunal. If in fact the word can be said to include such matters, then it must be given a restricted meaning to exclude such an interpretation to avoid absurd results.

In the upshot, I allow the application of the plaintiff subject to any B other rules of privilege that the defendants may seek to rely on.

Application allowed.

Reported by Jafisah Jaafar

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